



MT Dept of Labor & Industry

Employer Breeze

Serving Park, Sweet Grass and Meagher Counties

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By Joyce Heiser and Zanya Belley

Today's headlines don't exactly bring smiles to our faces. It's true that Montana's unemployment rate has gone up, with Park County reaching 7.4 at the end of December. Most of us have been touched in one way or another by the economic turmoil. While we wait and hope for positive results from the stimulus package, business and life continues.

What steps can we take to make the best of our own individual situations? To hopefully help improve the bottom line, avoid laying off employees and standing ready to grow when things turn around?

Help Wanted – and Available at No Cost!

An ounce of prevention is worth a pound of cure. Yes, that's an old saying and isn't always totally true. Even in today's business climate, there are still many helpful tips and resources available to help you weather the economic storm.

Your Livingston Job Service Workforce Center staff is here to help you in any way we can. One of the best things we offer is a connection to resources, knowledge of programs and information that may provide some solutions or assistance to businesses. We act as a gateway to government and community resources.

Job Service staff members have diverse backgrounds. We have experience as business owners, managers, employees, as well as former and current board members of wide ranging non-profit organizations. As experts in our field

we have a network of resources to refer your business to. We continue to assist businesses in finding creative solutions; minimizing the need for reducing hours, temporary employee layoffs, and employee transitions. We maintain strict confidentiality and, best of all, our services are already paid for through your business taxes.

A place to start

Times are challenging right now. While it always important to operate efficiently, it's even more crucial today. Here are some steps that may help your business minimize or even avoid layoff.

1. **Brainstorm** – Ask your employees for ideas on how your company can save. It isn't just a trite saying – Your employees ARE your most important resource. They are closest to the front lines and often see things in a different light. Asking them to be direct partners in the success of your business may bring you innovative ideas and boost morale – which also helps boost the bottom line.
2. **Job Sharing** – Employees may be willing to split a position, maybe share childcare responsibilities.
3. **Reduce hours** – Employees collect partial unemployment benefits while you retain your trained workforce.
4. **Network** – Look for creative “out of the box” ideas online, in trade magazines, at Job Service.
5. **Utilize resources** that specialize in assisting business like yours:

- **Livingston Job Service** – workforce development, a network of resources www.montanajobs.us/livingston
- **Montana Manufacturing Extension Center** – help manufacturers compete smart, streamline processes, develop cost-saving efficiencies www.mtmanufacturingcenter.com

COMING SOON!

April 21
Job Fest

April 23
ABC Clinic

Call 222-0520 for more info

ALERT

Don't forget:
Montana minimum wage is now \$6.90 per hour and will go to \$7.25 on July 24, 2009.

From December 2008 information (*preliminary data)	MT	U.S.
Unemployment rate/Non-seasonally adjusted	5.5*	7.1*

Area Unemployment Rates	2007	2008
Gallatin	2.6	4.6*
Meagher	5.6	6.7*
Park	4.3	7.4*
Sweet Grass	1.8	4.1*

- **Northern Rocky Mountain RC&D** – provides a variety of small business resources - www.nrmrcd.org
- **Small Business Administration** – counsels and assists the interests of small business - www.sba.gov
- **Business Expansion and Retention** – team of local economic, community and workforce development organizations assess business and provide referral to professionals and Incumbent Worker Training Grant funds <http://wsd.dli.mt.gov/local/livingston/BEAR/bear.asp>

What can a partnership with Job Service bring to the table to help your business?

1. Assist you in determining when and how to talk with your employees. – Your employees generally know more than you think they do about how business is doing. Not talking to them can perpetuate anxiety that things are not going well and launch their job search when it may be unwarranted. Your employees are often your best resource in identifying ways to cut costs, reduce waste, and increase productivity/profits.

2. Connect your business with experts trained to assist business. – Livingston Job Service is part of a regional pilot program for Incumbent Workers Training grants funds (IWT). With our community Business Expansion and Retention (BEAR) team, we can work with your business to help you determine ways to increase your long-term business success. Small businesses (25 or less full-time employees) may then qualify for IWT funds that will not only increase your staff skills, but the bottom line for your business.

3. Provide information on community resources that may help your employees stretch their own resources. By helping them connect to local services and resources, you may help relieve some concerns they deal with. While everyone tries to leave their troubles at home, it isn't always possible. Recognizing that and simply providing information demonstrates you care and could help improve your work environment.

Now what?

If after all this, you still find a layoff is necessary it is more important than ever to partner with Job Service. Although it's not something we want to brag about, we are experts in this area and can quickly and effectively bring together a team designed to meet needs specific to you and your employees.

Rapid Response: A team of Job Service staff stands ready to assist you in developing a transition plan for your employees if you need to reduce hours or layoff members of your staff. Facing either of these is stressful for you as a business owner/manager and for those impacted. By handling a layoff or reduction in hours with good communication, directness and by providing a supportive environment for the affected workers, you can reduce some of the stress on both sides of the lay off. Those steps can help avoid or reduce some of the negative pitfalls: employee resentment, decreased morale of your remaining staff and or poor perception of your company image.

Job Service can guide you through this process providing knowledge and resources to minimize the strain and fear for you and your staff. We'll help you navigate through the rules regarding WARN act (Worker Adjustment and Retraining

Notification), which requires advance notice to employees under certain circumstances (generally, a lay off of at least 50 people for businesses with 100 or more full time employees). If your business has been negatively affected by foreign competition, dislocated employees may be eligible for assistance under the Trade Adjustment Act (TAA) and we can provide information on filing a federal petition. We'll connect you to some great resources for you and the affected employees.

Our Rapid Response team is pulled from an extensive network of partners; those often included are representatives from:

Unemployment Insurance – to facilitate filing, answer specific questions, ease concerns.

Dislocated Worker Program – describe possible retraining and relocation assistance.

Job Service – provides labor market information, resume and interview assistance, workshops, career fairs, coaching on navigation of the hidden job market.

Outplacement services – at no extra cost to you or the employees.

Higher and Continuing Education – provide details of upcoming training opportunities and possible funding sources.

Financial Services – explain what services are available and how to talk to creditors about payment deferment or reduction while unemployed.

Children's Health Insurance Program (CHIP) – provides free or reduced health insurance to qualifying families.

Office of Public Assistance – provides Medicaid and Food Stamp information.

Counselors Services – explain the grieving process that often accompanies a layoff and what services are available to help.

Extension Office – variety of information from reducing energy bills, planning affordable meals, to creating a spending plan.

In addition to resume, interview, and job search assistance, Job Service connects displaced workers to community and government services, computers, internet, copier, phone, fax, up to date knowledge, and resources beyond company HR. These services are at no cost to the individual. Helping to connect your laid-off workers to these services will go a long way to reducing stress, provide a little hope, and reassure everyone you care about their welfare.

Job Service staff specializes in responding to the varied needs of area businesses, employers and employees. We recognize the stress that comes with reorganization of the workforce and uncertain economic times. If there's something you think of that might be helpful, give us a call. If we don't know it, do it or have it, we may know or be able to find someone who does! Let's keep working together to help our community prosper.



In Montana, noncompete agreements won't be enforced unless they're carefully written and employees receive some benefit in exchange for signing them. The Montana Supreme Court discussed that benefit, known as "consideration," in a recent case.

Facts

In 2005, Andy Hernandez was hired by Access Organics Sales to sell organic produce. Shortly after he went to work, he was promoted to sales manager. A month later, four months after his employment began, he signed a noncompete agreement.

Under the agreement, Hernandez agreed not to compete with the company for two years following termination of his employment. Not long after he signed the agreement, he was laid off because of financial difficulties. Although he returned on a part-time basis, he finally resigned and went into business with another former employee, Mike Vanderbeek. The new company sold both organic and regular produce. Access Organics sued to enforce the noncompete agreement.

Temporary restraining order

Access Organics asked the district court to issue an order forbidding Vanderbeek and Hernandez from competing in Flathead County. At a hearing, the company presented affidavits from customers testifying that Hernandez or Vanderbeek had contacted them to solicit business. The district court agreed with Access Organics and held that the two ex-employees had violated their noncompete agreements.

The court was willing to enforce the noncompete agreements because they were restricted to two years and were based on good consideration. It granted relief to Access Organics and forbade Hernandez and Vanderbeek from contacting any of its current or former customers. Hernandez appealed that order to the Montana Supreme Court.

Restraint of trade

Montana has a statute that says: "Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind . . . is to that extent void." Because Access Organics filed the lawsuit, it had the burden of proving that the noncompete agreements its employees signed didn't violate the law.

The court has said before that to be reasonable, a noncompete agreement must meet three basic requirements:

- (1) it must be partial or restricted in its operation in respect to either time or place;
- (2) it must be based on some good consideration; and (3) it must be reasonable — that is, it should afford only a fair protection to the interests of the party in whose favor it is made and mustn't be so large in its operation that it interferes with the interests of the public.

Hernandez argued that he didn't receive good consideration in exchange for signing the noncompete. Access Organic contended that his continued employment was good consideration.

Good consideration

The court discussed those arguments, noting that a noncompete agreement signed before an employee gets the job would be "simply a condition of employment which the employee takes into account when accepting or rejecting the employment offer."

The court did say that some noncompete agreements signed by existing employees could be valid if they were supported by a new consideration. So if an employer gives an employee a raise or promotion in exchange for a noncompete agreement, then the court indicated that would be good consideration.

In Hernandez's case, however, he was already employed and promoted when he signed the agreement. Because it's basic law that prior work can't be consideration, the fact that Access Organics gave him a job wouldn't be good consideration.

Interestingly, the court held that continued employment might be sufficient consideration for a noncompete "where an at-will employee is specifically guaranteed a definite period of continued employment." But since Hernandez didn't receive additional job security or a definite term of employment in exchange for signing the agreement, his continued employment wasn't good consideration. Thus, the noncompete agreement was unenforceable. *Access Organics, Inc. v. Andy Hernandez*, 2008 MT 4 (January 3, 2008).

Practical application

In this case, the court reiterated its requirements for a valid noncompete agreement. This extensive discussion of what is and isn't good consideration can serve as a guideline for Montana employers. Since only probationary employees can be "at will," the window left open by the court is very narrow.

If you intend to ask existing employees to sign a noncompete agreement, you must provide them with some additional benefit they otherwise wouldn't get. That could be a promotion, a raise in pay, or some other advantage. Failure to do so could make your noncompete agreement invalid and unenforceable.

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How to get more money into your employee’s paychecks during these difficult times.

The Earned Income Tax Credit or the EITC is a refundable federal income tax credit for low to moderate income working individuals and families. Congress originally approved the tax credit legislation in 1975 in part to offset the burden of social security taxes and to provide an incentive to work. When the EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit.

To qualify, taxpayers must meet certain requirements and file a tax return, even if they did not earn enough money to be obligated to file a tax return.

The EITC has no effect on certain welfare benefits. In most cases, EITC payments will not be used to determine eligibility for Medicaid, Supplemental Security Income (SSI), food stamps, low-income housing or most Temporary Assistance for Needy Families (TANF) payments.

If an employee expects to be eligible to receive the EITC this year and has a qualifying child, they may chose to get the payments of the EITC in their paychecks now instead of waiting to get it all at one in 2010 when they file their 2009 tax return. The maximum Advanced EITC for 2009 an employer is allowed to provide to employee’s pay is \$1,826.00. Below are the income guidelines for you and your employee to view to see if they would qualify for the Advanced EITC. To apply for the Advanced EITC employees will need to complete a W-5, available for download at www.irs.gov.

NOTE: The Advance EITC does not add to an employer’s payroll. Essentially, the employer diverts some of the payroll taxes from the Federal Government to the individual taxpayer.

	Single, Head of Household, Qualifying Widow(er)	Married Filing Jointly
Taxpayer with NO Qualifying Child	\$13,440	\$16,560
Taxpayer with ONE Qualifying Child	\$35,463	\$38,583
Taxpayer with	\$40,295	\$43,415



The maximum credit for Tax Year 2009 would be as follows:

- \$5,028 with two or more qualifying children;
- \$3,043 with one qualifying child;
- \$457 with no qualifying children.



**Livingston Job Service Employer
Committee**
220 East Park Street
Livingston, MT 59047
Contact Susan Hanken at: 222-8907



ASSISTANCE FOR BUSINESS CLINIC

The Assistance for Business Clinics are developed to assist NEW and ESTABLISHED employers, managers, accountants, bookkeepers and lawyers in constructing a proactive approach to prevent unnecessary claims and/or charges by providing updated reporting of State withholding, Unemployment Tax requirements, Minimum Wage and overtime laws, Civil Rights laws, Federal Tax Incentives and Financial Management.

Presentations by:

Department of Commerce

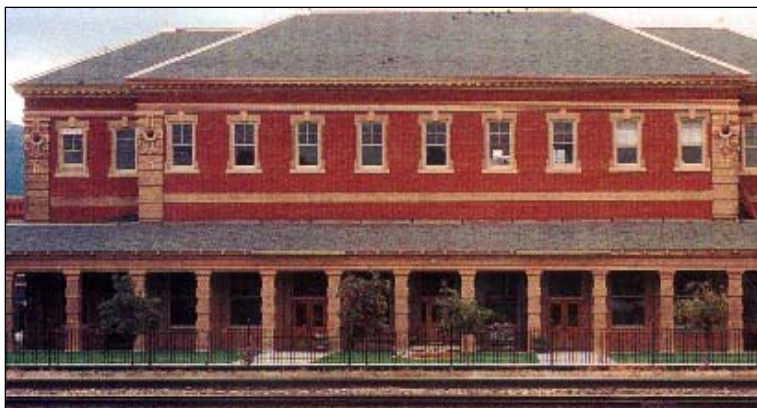
- Financial Management

Department of Revenue

- Withholding Tax

Department of Labor & Industry

- Wage & Hour
- Worker's Compensation/Safety
- Human Rights
- Unemployment Insurance Tax and Benefits
- Workforce Services, Employer Services, & Federal Tax Credits



The Livingston Depot Center

Thursday, April 23, 2009
200 West Park Street
Livingston, Montana

Registration: 7:30-8:00a.m.

Agency Presentations: 8:00a.m.-5:00 p.m.

Cost: \$40.00

Includes: Lunch & Refreshments

Registration Form - 2009 Assistance for Business Clinic

****Check if needing credits: CPE __ (8.0 hrs) or CLE __ (TBA)**

Make Checks Payable to JSEC

Name of Business _____ Email _____

Address _____ Town/Zip _____

& Name (s) of those attending _____

LIVINGSTON'S 4th ANNUAL JOB FEST



**It's the perfect time to find the
Perfect Fit!**

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Showcase your organization to prospective employees
Hire talent with efficient and cost effective recruiting

Livingston, Montana's Premier Career Fair

Sponsored by Livingston JSEC & The Livingston Chamber of Commerce

Tuesday, April 21, 2009 11:00 - 3:00 pm

Park County Fair Grounds

Only \$50.00 per booth

Checks and Credit Cards Accepted

Your Best Opportunity to Hire Talented Job Seekers!

For more information contact Livingston Job Service at
406-222-0520 or e-mail LivingstonJSC@mt.gov

Registration Forms may be downloaded at the following link:

Microsoft® Word - http://wsd.dli.mt.gov/local/livingston/forms/job_fest/2009_registration.doc

Adobe® PDF - http://wsd.dli.mt.gov/local/livingston/forms/job_fest/2009_registration.pdf